

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005189

Variance

Hearing Date:

May 10, 2006 (Continued from April 12, 2006)

Agenda Item:

21

Supervisory District:

2

Applicant:

Noel J. Hebets

Property Owner:

Oma Lee Bergman Trust

Request:

Variances to permit:

- 1) A proposed rear yard setback for an existing single-family residence of 19.8 feet where 40 feet is the minimum required,
- 2) A proposed front yard setback for an existing single-family residence of 27.5 feet where 40 feet is the minimum required,
- 3) A proposed front yard setback for an existing detached accessory structure (well house) of 8.1 feet where 40 feet is the minimum required; and
- 4) An existing building separation distance of 11 feet (house/well house) where 15 feet is the minimum required in the Rural-43 zoning district.

These variances are requested from the following Zoning Ordinance Section(s):

- 1) Section 503, Article 503.4.3
- 2 & 3) Section 503, Article 503.4.1.a
- 4) Section 503, Article 503.5.5

Site Location:

27211 North 136th Street – Rio Verde Drive and 136th Street
(Rio Verde area)

Site Size: Lot 1 - 60,331 square feet (1.385 acres)
Lot 2 - 152,765 square feet (3.507 acres)

Existing Zoning: Rural-43

Current Use: Residential

**Citizen
Support/Opposition:** None known

**Staff
Recommendation:** 1, 2 and 3) **Deny**
4) **Approve** with stipulations

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43 and R1-130 (City of Scottsdale)
North: Rural-43
South: Rural-43
East: Rural-43
West: R1-130 (City of Scottsdale)

Existing On-Site and Surrounding Land Use:

2. On-site: Single-family residence
North: Vacant
South: Single-family residence
East: Vacant
West: 136th Street then vacant (City of Scottsdale)

Background:

3. **August 23, 1963:** The parent parcel was transferred from United States Government ownership to the first owner as part of a larger 3,100 acre parcel.
4. **May 1983:** Building permit **83103300** was obtained to place a mobile home on the subject site.
5. **November 4, 1983:** The City of Scottsdale annexed parcel **219-39-011W** along with more than 12,000 acres of land to the west of the subject site.
6. **November 12, 1984:** Building permit **84005093** was obtained to build a single family residence on the subject site.

7. **December 16, 1993:** The owner took title to the subject property via a Grant Deed recorded under docket number **930881216**.
8. **Circa 1995:** A Conditional Use Permit was approved for caretaker's quarters on the subject site.
9. **April 27, 1995:** The owner was issued building permit **95095512** to renovate and put an addition on an accessory structure to serve as a caretaker quarters on the subject site.
10. **December 15, 2005:** The applicant submitted this variance request.
11. **April 12, 2006:** This case was forwarded to the May 10, 2006 hearing date due to a lack of quorum.

Findings:

12. **Maricopa County Department of Transportation:** No response at the time this report was written.
13. **Flood Control District:** No objection to these requests. Memorandum provided notes that the subject site is located outside of the Preliminary Zone AE floodplain, a Floodplain Clearance may be required. (see attached memo).
14. **Environmental Services Department:** No objection to the requests (see attached memo).

Site Analysis:

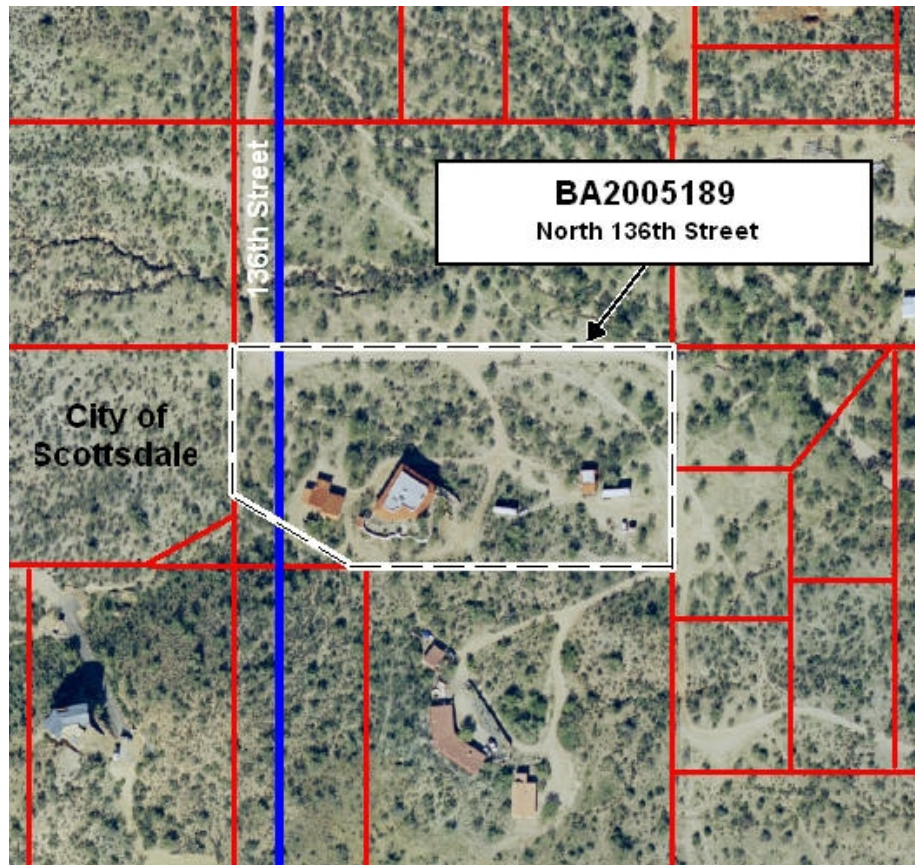
15. The subject property is located approximately 3,000 feet south of Rio Verde Drive and is accessed via 136th Street. This rectangular shaped property is approximately 4.9 acres and has an east/west lot orientation. The site is located in the Rio Verde area and is zoned Rural-43. In addition to the home on the subject site, some of the scattered homes were built in the mid-1980s to late 1990s with only a few more recent homes built in the general area. The surrounding area is comprised mostly of site built homes on large rural lots. There are very few standard sized lots in the general area which has developed through the lot splitting process. There is an area of more recent splits immediately to the east of the subject site.
16. Currently, the owners have two residences on the subject site. Proposed lot 1 has an approximately 2,200 square foot residence. On proposed lot 2 there is an approximately 4,900 square foot, single-family residence, a 610 square foot barn and a 180 square foot well house with a block screen wall on enclosing the southern side of the residence. There is a graded driveway that serves the two residences. Much of the eastern portion of the site is undeveloped with the barn being the only built structure shown. There is no evidence of any on-site washes and, while the site does remain in a

natural state, the site is mostly level and free from any physical or topographical hardships. There is a large wash to the north of the subject site.

17. Access to the subject site is from Rio Verde Drive to the north, a paved, two lane major collector road that provides access to the subject site via 136th Street. 136th Street is a roughly graded local access road of varying width.
18. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 Zoning District	Proposed Standard Lot 1	Proposed Standard Lot 2
Front Yard Setback	40-feet	92.4-feet	8.1-feet
Rear Yard Setback	40-feet	19.8-feet	360-feet
Side Yard Setback	30-feet	68.8-feet	68.5-feet
Street Side Setback	20-feet	n/a	n/a
Maximum Height	30-feet/2 stories	18-feet/1 story	20-feet/1 story
Minimum Lot Area	43,560-sq. ft.	60,331-sq. ft.	152,765-sq. ft.
Minimum Lot Width	145-feet	255.15-feet	344.98-feet
Building Separation	15-feet	n/a	11-feet
Lot Coverage	15%	3.6%	3.7%

*Standards indicated in **bold** do not meet minimum base zoning standards.



Aerial view of the subject site and surrounding area.

Land Use Analysis:

19. The subject site is located in the Rio Verde area south of Rio Verde Drive and east of 136th Street adjacent to the City of Scottsdale corporate limits. A portion of the proposed lot 1 is located in Scottsdale. The area has slowly developed through the lot-splitting process and is primarily residential with some equestrian uses. Development of this area has resulted in increased dust, traffic and stormwater runoff. There are no recorded subdivisions in this area.
20. The terrain in the general area is difficult to develop with numerous washes and is densely vegetated with Upper Sonoran type vegetation. In the past, much of the development in the immediate area resulted in parcels being mass graded prior to construction of the residences. There are recently split one acre parcels to the east of the subject site that are significantly smaller than the existing parcels.
21. Staff research was unable to find evidence of any variance requests in the immediate area.

Plan Analysis:

22. These are multiple variance requests to permit a proposed rear yard setback for an existing single-family residence of 19.8 feet where 40 feet is the minimum required, a proposed front yard setback for an existing single-family residence of 27.5 feet where 40 feet is the minimum required, a proposed front yard setback for an existing detached accessory structure (well house) of 8.1 feet where 40 feet is the minimum required; and an existing building separation distance of 11 feet (house/well house) where 15 feet is the minimum required in the Rural-43 zoning district. These requests came about when the applicant submitted for these variance requests prior to recording the proposed lot split.
23. Variance requests one, two, and three all relate to the Conditional Use Permit that was granted in 1995 that permitted a second dwelling unit on the subject site for use as a caretaker quarters for the owner's elderly mother. According to the original building permit the caretaker's quarters consisted of a new 25 foot by 31 foot 6 inch residential addition built onto the existing 20 foot by 31 foot shop building with the shop remodeled into a kitchen and living area. Their mother died in the last year. As noted in the Supplemental Questionnaire, the son and daughter now wish to split the property so that the son can remain in the "guest house" where he currently lives and the daughter can remain in the main house. The split proposes a 1.3 acre parcel with the caretaker's quarters and a 3.5 acre parcel with the primary residence.
24. The Maricopa County Zoning Ordinance (MCZO) is specific about allowing Caretakers Quarters as a Conditional Use. In accordance with MCZO Section 1303.2.3 "Upon sale of the property, cessation of the conditions requiring on-site residence of the caretaker, or termination of the Conditional Use Permit, the caretaker's quarters (additional unit) are

to be removed." Staff believes that with the mother's death, that the "conditions requiring on-site residence" have ceased. It is unfortunate that there are "economic conditions" that have, in part, contributed to the necessity to split the subject site into two separate parcels and created the need for these variance requests for proposed setbacks. There are no hardships associated with the proposed lot split that support these three variances. As an alternative, the lot split could occur in such a manner as the caretaker's quarters could be returned to a non-residential and accessory use. This would require the construction of a new residence on a parcel split to the east of the existing residence. With the exception of the barn on that portion of subject site, the eastern half of the parcel is largely undeveloped. While this is not the most economically viable alternative for the owners, granting setback variances on caretaker's quarters would create precedence for future owners to apply for variances on second dwellings and alternatives are readily available to the owners at this time. This is a large site and reconfiguring the proposed lot split to the east of the primary residence would require no variances. Based on the interpretation of the MCZO concerning caretaker's quarters, staff recommends denial of these three variance requests.

25. Request four relates to the placement of the existing well house that encloses the on-site well. While researching aerial photographs from the Maricopa County Assessor's website, staff was unable to determine when the pump house was placed in its current location but that it has been in place since at least 1999 and probably has been in place for much longer than that. Staff was unable to find any record that well house had ever been permitted.
26. Staff acknowledges that wells and storage tanks are a common occurrence in areas that require well water and, unfortunately, a developer or property owner(s) tend to put them in places most convenient without any regard to the zoning setbacks for structures or even that the need for a building permit exists. In this case, the well site is near the house and the owner enclosed that well site. While there are no topographical hardships associated with this request and this request is self-created, staff believes that the location of the well 11 feet from the primary residence has a minimal impact on the subject site and surrounding properties; therefore staff recommends approval of variance request four.

Recommendation: (BA2005189)

27. Staff recommends **denial** of variance requests one, two and three based on the following:
 - The need for these variance requests is self-created.
 - There are viable alternatives available that could minimize or eliminate the need for these variance requests.
 - Granting these requests may confer a special privilege upon the applicant.
 - These requests conflict with the intent of the Zoning Ordinance.

28. If the Board finds that a reasonable use of the property cannot be made without these variances, then these requests may be approved, subject to the following stipulations:
- a) General compliance with the Proposed Lot Split Site Plan received March 6, 2006.
 - b) The owner shall remit \$20.00 to the Maricopa County Planning and Development Department for the one additional variance request prior to receiving any zoning clearances and/or building permits.
 - c) The applicant shall obtain all necessary as-built permits within 120 days of Board approval.
29. Staff recommends **approval** of variance request four based on the following:
- The relief requested is the minimum required necessary to provide the applicant with full use and enjoyment of the property.
 - The request does not conflict with the intent of the Zoning Ordinance.
- Subject to the following stipulations:
- a) General compliance with the Proposed Lot Split Site Plan received March 6, 2006.
 - b) The owner shall remit \$20.00 to the Maricopa County Planning and Development Department for the one additional variance request prior to receiving any zoning clearances and/or building permits.
 - c) The applicant shall obtain all necessary as-built permits within 120 days of Board approval.
30. If the Board finds that a reasonable use of the property can be made without this variance, then this request should be denied.

mjlw

Attachments: Case Map BA2005189
Zoning Map
Assessor Map
Proposed Lot Split Site Plan
Application
Supplemental Questionnaire (3 pages)
Flood Control Memorandum
Hebets File Memo
Hebets Letter (2 pages)
Environmental Services Memorandum
Photographs (2 pages)